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2 **UNITED STATES DISTRICT COURT**
3 **DISTRICT OF NEVADA**
4

5 ROBERT K. AMINE,

6 Plaintiff(s),

7 v.

8 ANDREW SAUL,

9 Defendant(s).

Case No.: 2:17-cv-02523-NJK

ORDER

10 On January 21, 2020, this case was reassigned to the undersigned magistrate judge,
11 pursuant to the parties' consent to the undersigned being the sole judicial officer assigned to the
12 case. *See* General Order 2019-08 (D. Nev. Dec. 3, 2019); *see also* 28 U.S.C. § 636(c). This case
13 involves judicial review of administrative action by the Commissioner of Social Security
14 ("Commissioner") denying Plaintiff's application for disability insurance benefits pursuant to
15 Titles II and XVI of the Social Security Act. Currently before the Court is Plaintiff's Motion for
16 Reversal and/or Remand. Docket No. 17. The Commissioner filed a response in opposition and
17 a cross-motion to affirm. Docket No. 18. No reply was filed. *See* Docket.

18 **I. STANDARDS**

19 A. Judicial Standard of Review

20 The Court's review of administrative decisions in social security disability benefits cases
21 is governed by 42 U.S.C. § 405(g). *Akopyan v. Barnhart*, 296 F.3d 852, 854 (9th Cir. 2002).
22 Section 405(g) provides that, "[a]ny individual, after any final decision of the Commissioner of
23 Social Security made after a hearing to which he was a party, irrespective of the amount in
24 controversy, may obtain a review of such decision by a civil action . . . brought in the district court
25 of the United States for the judicial district in which the plaintiff resides." The Court may enter,
26 "upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing
27 the decision of the Commissioner of Social Security, with or without remanding the cause for a
28 rehearing." *Id.*

1 The Commissioner's findings of fact are deemed conclusive if supported by substantial
2 evidence. *Id.* To that end, the Court must uphold the Commissioner's decision denying benefits
3 if the Commissioner applied the proper legal standard and there is substantial evidence in the
4 record as a whole to support the decision. *Webb v. Barnhart*, 433 F.3d 683, 686 (9th Cir. 2005).
5 Substantial evidence is "more than a mere scintilla," which equates to "such relevant evidence as
6 a reasonable mind might accept as adequate to support a conclusion." *Biestek v. Berryhill*, ____
7 U.S. ____, 139 S. Ct. 1148, 1154 (2019). "[T]he threshold for such evidentiary sufficiency is not
8 high." *Id.* In determining whether the Commissioner's findings are supported by substantial
9 evidence, the Court reviews the administrative record as a whole, weighing both the evidence that
10 supports and the evidence that detracts from the Commissioner's conclusion. *Reddick v. Chater*,
11 157 F.3d 715, 720 (9th Cir. 1998).

12 Under the substantial evidence test, the Commissioner's findings must be upheld if
13 supported by inferences reasonably drawn from the record. *Batson v. Comm'r, Soc. Sec. Admin.*,
14 359 F.3d 1190, 1193 (9th Cir. 2004). When the evidence will support more than one rational
15 interpretation, the Court must defer to the Commissioner's interpretation. *Burch v. Barnhart*, 400
16 F.3d 676, 679 (9th Cir. 2005). Consequently, the issue before this Court is not whether the
17 Commissioner could reasonably have reached a different conclusion, but whether the final decision
18 is supported by substantial evidence.

19 It is incumbent on the Administrative Law Judge ("ALJ") to make specific findings so that
20 the Court does not speculate as to the basis of the findings when determining if the Commissioner's
21 decision is supported by substantial evidence. The ALJ's findings should be as comprehensive
22 and analytical as feasible and, where appropriate, should include a statement of subordinate factual
23 foundations on which the ultimate factual conclusions are based, so that a reviewing court may
24 know the basis for the decision. *See, e.g., Gonzalez v. Sullivan*, 914 F.2d 1197, 1200 (9th Cir.
25 1990).

26 B. Disability Evaluation Process

27 The individual seeking disability benefits bears the initial burden of proving disability.
28 *Roberts v. Shalala*, 66 F.3d 179, 182 (9th Cir. 1995). To meet this burden, the individual must

1 demonstrate the “inability to engage in any substantial gainful activity by reason of any medically
2 determinable physical or mental impairment which can be expected . . . to last for a continuous
3 period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A). More specifically, the individual
4 must provide “specific medical evidence” in support of his claim for disability. *See, e.g.*, 20 C.F.R.
5 § 404.1514. If the individual establishes an inability to perform his prior work, then the burden
6 shifts to the Commissioner to show that the individual can perform other substantial gainful work
7 that exists in the national economy. *Reddick*, 157 F.3d at 721.

8 The ALJ follows a five-step sequential evaluation process in determining whether an
9 individual is disabled. *Bowen v. Yuckert*, 482 U.S. 137, 140 (1987) (citing 20 C.F.R. §§ 404.1520,
10 416.920). If at any step the ALJ determines that he can make a finding of disability or
11 nondisability, a determination will be made and no further evaluation is required. *See Barnhart v.*
12 *Thomas*, 540 U.S. 20, 24 (2003); *see also* 20 C.F.R. § 404.1520(a)(4). The first step requires the
13 ALJ to determine whether the individual is currently engaging in substantial gainful activity
14 (“SGA”). 20 C.F.R. § 404.1520(b). SGA is defined as work activity that is both substantial and
15 gainful; it involves doing significant physical or mental activities usually for pay or profit. 20
16 C.F.R. § 404.1572(a)-(b). If the individual is currently engaging in SGA, then a finding of not
17 disabled is made. If the individual is not engaging in SGA, then the analysis proceeds to the second
18 step.

19 The second step addresses whether the individual has a medically determinable impairment
20 that is severe or a combination of impairments that significantly limits him from performing basic
21 work activities. 20 C.F.R. § 404.1520(c). An impairment or combination of impairments is not
22 severe when medical and other evidence does not establish a significant limitation of an
23 individual’s ability to work. *See* 20 C.F.R. §§ 404.1521, 404.1522. If the individual does not have
24 a severe medically determinable impairment or combination of impairments, then a finding of not
25 disabled is made. If the individual has a severe medically determinable impairment or combination
26 of impairments, then the analysis proceeds to the third step.

27 The third step requires the ALJ to determine whether the individual’s impairments or
28 combination of impairments meet or medically equal the criteria of an impairment listed in 20

1 C.F.R. Part 404, Subpart P, Appendix 1. 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526. If the
2 individual's impairment or combination of impairments meet or equal the criteria of a listing and
3 meet the duration requirement (20 C.F.R. § 404.1509), then a finding of disabled is made. 20
4 C.F.R. § 404.1520(d). If the individual's impairment or combination of impairments does not
5 meet or equal the criteria of a listing or meet the duration requirement, then the analysis proceeds
6 to the next step.

7 Before considering step four of the sequential evaluation process, the ALJ must first
8 determine the individual's residual functional capacity. 20 C.F.R. § 404.1520(e). The residual
9 functional capacity is a function-by-function assessment of the individual's ability to do physical
10 and mental work-related activities on a sustained basis despite limitations from impairments.
11 Social Security Rulings ("SSRs") 96-8p.¹ In making this finding, the ALJ must consider all of the
12 symptoms, including pain, and the extent to which the symptoms can reasonably be accepted as
13 consistent with the objective medical evidence and other evidence. 20 C.F.R. § 404.1529. To the
14 extent that statements about the intensity, persistence, or functionally-limiting effects of pain or
15 other symptoms are not substantiated by objective medical evidence, the ALJ must evaluate the
16 individual's statements based on a consideration of the entire case record. SSR 16-3p. The ALJ
17 must also consider opinion evidence in accordance with the requirements of 20 C.F.R. § 404.1527.

18 The fourth step requires the ALJ to determine whether the individual has the residual
19 functional capacity to perform his past relevant work ("PRW"). 20 C.F.R. § 404.1520(f). PRW
20 means work performed either as the individual actually performed it or as it is generally performed
21 in the national economy within the last 15 years or 15 years prior to the date that disability must
22 be established. In addition, the work must have lasted long enough for the individual to learn the
23 job and performed at SGA. 20 C.F.R. §§ 404.1560(b), 404.1565. If the individual has the residual
24 functional capacity to perform his past work, then a finding of not disabled is made. If the

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27 ¹ SSRs constitute the Social Security Administration's official interpretations of the statute
28 it administers and its regulations. *See Bray v. Comm'r, Soc. Sec. Admin.*, 554 F.3d 1219, 1224
(9th Cir. 2009). They are entitled to some deference as long as they are consistent with the Social
Security Act and regulations. *Id.*

1 individual is unable to perform any PRW or does not have any PRW, then the analysis proceeds
2 to the fifth and last step.

3 The fifth and final step requires the ALJ to determine whether the individual is able to do
4 any other work considering his residual functional capacity, age, education, and work experience.
5 20 C.F.R. § 404.1520(g). If the individual is able to do other work, then a finding of not disabled
6 is made. Although the individual generally continues to have the burden of proving disability at
7 this step, a limited burden of going forward with the evidence shifts to the Commissioner. The
8 Commissioner is responsible for providing evidence that demonstrates that other work exists in
9 significant numbers in the national economy that the individual can do. *Lockwood v. Comm’r,*
10 *Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010).

11 **II. BACKGROUND**

12 **A. Procedural History**

13 On May 22, 2014, Plaintiff filed an application for disability insurance benefits, alleging a
14 disability onset date of October 26, 2013. A.R. 189–90. On May 23, 2014, Plaintiff applied for
15 supplemental security income benefits, also alleging a disability onset date of October 26, 2013.
16 A.R. 191–207. Plaintiff’s claims were denied initially on August 15, 2014, and upon
17 reconsideration on December 4, 2014. A.R. 114–119, 125–135. On January 12, 2015, Plaintiff
18 filed a request for a hearing before an ALJ. A.R. 136–137. On March 17, 2016, Plaintiff,
19 Plaintiff’s counsel, a vocational expert, and Plaintiff’s wife appeared for a hearing before ALJ
20 Christopher Daniels. A.R. 40–60. On April 13, 2016, the ALJ issued an unfavorable decision
21 finding that Plaintiff has not been under a disability, as defined by the Social Security Act, through
22 the date of the decision. A.R. 24–39. On August 7, 2017, the ALJ’s decision became the final
23 decision of the Commissioner when the Appeals Council denied Plaintiff’s request for review.
24 A.R. 1–7.

25 On September 28, 2017, Plaintiff commenced this action for judicial review pursuant to 42
26 U.S.C. §§ 405(g) and 1383(c). *See* Docket No. 1. On January 21, 2020, this case was reassigned
27 to the undersigned, pursuant to the parties’ consent to the undersigned being the sole judicial
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1 officer assigned to the case. *See* General Order 2019-08 (D. Nev. Dec. 3, 2019); *see also* 28 U.S.C.
2 § 636(c).

3 **B. The Decision Below**

4 The ALJ’s decision followed the five-step sequential evaluation process set forth in 20
5 C.F.R. § 404.1520. A.R. 27–34. At step one, the ALJ found that Plaintiff meets the insured status
6 requirements of the Social Security Act through December 31, 2014, and has not engaged in
7 substantial gainful activity since October 26, 2013. A.R. 29. At step two, the ALJ found that
8 Plaintiff has the following severe impairments: obsessive-compulsive disorder (“OCD”) and
9 depressive disorder (“DD”). A.R. 29. At step three, the ALJ found that Plaintiff does not have an
10 impairment or combination of impairments that meets or medically equals the severity of one of
11 the listed impairments in in 20 C.F.R. Part 404, Subpart P, Appendix 1. A.R. 29–30. The ALJ
12 found that Plaintiff has the residual functional capacity to perform:

13 a full range of work at all exertional levels but with the following
14 nonexertional limitations: the claimant is able to perform unskilled
15 work requiring no more than occasional interaction with coworkers,
16 supervisors, and the general public; he is able to adapt to changes
consistent with unskilled work, but is unable to perform assembly
line work.

17 A.R. 31–34. At step four, the ALJ found that Plaintiff is capable of performing past relevant work
18 as an auto parts worker, kitchen assistant, and bakery helper. A.R. 34. Based on all of these
19 findings, the ALJ found Plaintiff not disabled through the date of the decision. A.R. 34.

20 **III. ANALYSIS AND FINDINGS**

21 Plaintiff raises two issues on appeal, submitting that the ALJ erred in giving little weight
22 to treating physician Dr. Anuranjan Bist’s opinion and in rejecting Plaintiff’s subjective symptom
23 testimony. Docket No. 17 at 5–11. The Court discusses these issues in turn.

24 **A. Dr. Bist’s Opinion**

25 Plaintiff submits that the ALJ’s reasoning for rejecting Dr. Bist’s opinion is not supported
26 by substantial evidence. Docket No. 17 at 5–7. The Commissioner responds that the ALJ gave
27 good reasons supported by substantial evidence for assigning less weight to Dr. Bist’s opinion.
28 Docket No. 18 at 5–7. The Commissioner has the better argument.

1 A treating physician's medical opinion as to the nature and severity of an individual's
2 impairment is entitled to controlling weight when that opinion is well-supported and not
3 inconsistent with other substantial evidence in the record. *See, e.g., Edlund v. Massanari*, 253
4 F.3d 1152, 1157 (9th Cir. 2001). Even when not controlling, such opinions are entitled to
5 deference and must be weighed properly pursuant to applicable regulations. *See, e.g., id.*
6 Nonetheless, the opinion of a treating physician is not necessarily conclusive as to the existence
7 of an impairment or the ultimate issue of a claimant's disability. *See, e.g., Thomas v. Barnhart*,
8 278 F.3d 947, 956 (9th Cir. 2002). If a treating doctor's opinion is contradicted by another doctor,
9 the ALJ may reject the treating doctor's opinion by providing "specific and legitimate reasons"
10 supported by substantial evidence in the record. *See, e.g., Lester v. Chater*, 81 F.3d 821, 830 (9th
11 Cir. 1995). Similarly, if a treating doctor's opinion is contradicted by the record, the ALJ may
12 reject the treating doctor's opinion by providing "specific and legitimate reasons" supported by
13 substantial evidence in the record. *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002). An
14 ALJ may also reject check-box forms that do not contain any explanation of the bases of their
15 conclusions. *Sackett v. Berryhill*, 2019 WL 1787337, at *11 (D. Nev. Apr. 24, 2019).

16 Dr. Bist opined in a check-box form that Plaintiff's mental-health symptoms will interfere
17 with his capacity for competitive employment and his ability to retain employment, as he has
18 obscure thoughts, lacks focus, and is easily distracted. A.R. 340. Dr. Bist also opined that Plaintiff
19 would miss more than four days a month from work due to his psychologically based symptoms.
20 A.R. 342. The ALJ gave Dr. Bist's opinion little weight because "it is not supported by or
21 consistent with the objective medical evidence, or record as a whole . . . [and] greatly overstates
22 the severity of [Plaintiff's] symptoms and limitations." A.R. 33.

23 In so finding, the ALJ considered Dr. Bist's notes, Dr. Maria Doncaster's opinion, and the
24 state DDS agency psychological consultants' opinions. *See* A.R. 32–34. First, Dr. Bist's
25 examination notes for Plaintiff contain opinions that Plaintiff had normal mental status on several
26 metrics. A.R. 327, 329, 345, 350, 352. In May 2014, Dr. Bist assigned Plaintiff a normal GAF
27 score. A.R. 330. Further, in February 2015, Dr. Bist found that Plaintiff had good judgment and
28 insight, intact normal thought processes, and attention, concentration, and memory "WNL" (i.e.,

1 within normal limits). A.R. 352. Second, Dr. Doncaster, who conducted a consultative
2 psychological examination of Plaintiff in July 2014, opined that Plaintiff could understand,
3 remember, and carry out complex, detailed, and simple one- or two-step instructions; that Plaintiff
4 could carry out detailed and simple instructions on a sustained basis; and that Plaintiff may be able
5 to get along with authority figures and peers. A.R. 335–36. Because Dr. Doncaster examined
6 Plaintiff, her opinion alone constitutes substantial evidence. *See Tonapetyan v. Halter*, 242 F.3d
7 1144, 1149 (9th Cir. 2001) (citations omitted). Finally, the state DDS agency psychological
8 consultants opined that Plaintiff had no severe medically determinable impairments. A.R. 72–80,
9 95–105. The consultants explained their opinions and their opinions discuss and track Dr.
10 Doncaster’s assessment; therefore, their opinions properly constitute substantial evidence. *See* 20
11 C.F.R. § 404.1527(c)(3); *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002). Therefore, the
12 Court finds that the ALJ’s decision to give Dr. Bist’s opinion less weight is proper and supported
13 by substantial evidence. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). Accordingly, the
14 Court finds that the ALJ did not err in assigning less weight to the opinion of Dr. Bist.

15 **B. Plaintiff’s Subjective Symptom Testimony**

16 Plaintiff next submits that the ALJ failed to give clear and convincing reasons for
17 discounting his testimony. Docket No. 17 at 7–11. The Commissioner responds that the ALJ gave
18 sufficient reasons supported by substantial evidence for rejecting Plaintiff’s subjective symptom
19 testimony. Docket No. 18 at 7–9. The Commissioner has the better argument.

20 The ALJ is required to engage in a two-step analysis to evaluate a claimant’s testimony as
21 to his pain and other symptoms: (1) determine whether the individual presented objective medical
22 evidence of an impairment that could reasonably be expected to produce some degree of pain or
23 other symptoms alleged; and (2) if so, whether the intensity and persistence of those symptoms
24 limit an individual’s ability to perform work-related activities. *See* SSR 16-3p. In the absence of
25 evidence of malingering, an ALJ may only reject the individual’s testimony about the severity of
26 symptoms by giving specific, clear, and convincing reasons. *See Vasquez v. Astrue*, 572 F.3d 586,
27 591 (9th Cir. 2009). Factors that an ALJ may consider include inconsistent daily activities, an
28 inconsistent treatment history, and other factors concerning an individual’s functional limitations.

1 See SSR 16-3p. If an ALJ's determination to discount this testimony is supported by substantial
2 evidence, the courts should not second-guess that determination. *Chaudhry v. Astrue*, 688 F.3d
3 661, 672 (9th Cir. 2012).

4 Plaintiff alleges disability due to OCD and generalized anxiety disorder. A.R. 223, 314.
5 Plaintiff testified that he had not worked since 2013 and had been fired many times for poor job
6 performance or having problems with customers or supervisors. A.R. 44–47. Plaintiff also
7 testified that he is on edge, gets easily distracted, and has to go back and repeat steps until it “feels
8 right” while he walks. A.R. 46–47. Plaintiff further testified that, though he had been prescribed
9 medication in the past, he was not currently taking any. A.R. 47. Plaintiff additionally testified
10 that he had not had health insurance since 2011 and that his lack of insurance caused him not to be
11 able to afford treatment or medication. A.R. 52. At bottom, Plaintiff testified that he is distracted
12 90% of the day by his OCD episodes, each lasting from 30 seconds to a couple of hours. A.R. 49.

13 The ALJ found that Plaintiff's statements about the intensity, persistence, and limiting
14 effects of his symptoms were inconsistent with the medical evidence of record. A.R. 32. As noted
15 above, the ALJ found that Dr. Bist's findings of normal mental status undermine a claim of
16 disabling symptoms to the extent that Plaintiff testified. A.R. 32–33. Further, the ALJ found that
17 the opinions of Dr. Doncaster and the state DDS agency psychological consultants, as discussed
18 above, also undermine Plaintiff's testimony as to the extent of his disabling symptoms. A.R. 33.
19 Additionally, the record clearly demonstrates that Plaintiff treated with Dr. Bist and obtained
20 medication during the period of time he was not insured. A.R. 326–327, 328–330, 344–345, 349–
21 350, 351–352.

22 In evaluating a claimant's testimony regarding his pain and other symptoms, it is proper
23 for the ALJ to consider evidence from medical sources that have and have not treated the claimant.
24 SSR 16-3p(2)(b). Therefore, the Court finds that the reasons given by the ALJ for rejecting
25 Plaintiff's subjective symptom allegations are specific and legitimate and are supported by
26 substantial evidence, and constitute appropriate reasons for rejecting pain and limitation testimony.
27 See *Burch*, 400 F.3d at 679. Accordingly, the Court finds that the ALJ did not err in rejecting
28 Plaintiff's subjective symptom allegations.

1 **IV. CONCLUSION**

2 Based on the foregoing, the Court **DENIES** Plaintiff's Motion for Reversal and/or Remand
3 (Docket No. 17) and **GRANTS** Commissioner's Cross-Motion to Affirm (Docket No. 18). The
4 Clerk's Office is instructed to **ENTER FINAL JUDGMENT** accordingly and to **CLOSE** this
5 case.

6 Dated: January 22, 2020

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9 Nancy J. Koppe
10 United States Magistrate Judge
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